



# California Fair Political Practices Commission

October 4, 1985

David M. Kennedy  
City Attorney  
200 Lincoln Avenue  
Salinas, CA 93901

Re: Your Request for Advice,  
Our File No. A-85-194

Dear Mr. Kennedy:

Thank you for your letter requesting advice on behalf of Planning Commissioner Robert T. Adcock regarding his duties under the conflict of interest provisions of the Political Reform Act.<sup>1/</sup>

You have informed us that Planning Commissioner Adcock has an investment interest of \$1,000 or more in the Alisal Water Company. Alisal Water Company is a corporation which has received authorization from the California Public Utilities Commission to issue and sell stock. Alisal has issued stock, but the stock has not been offered for public sale. Currently, Planning Commissioner Adcock and his wife own 8,300 shares and there is an employee stock ownership trust which owns 3,350 shares.

The City of Salinas has recently annexed 1,200 acres of agricultural land, part of which is in the service area of the Alisal Water Company. You have stated that development of this land appears imminent.

The Alisal Water Company's monthly charge per dwelling unit is approximately \$6 or \$7 per month. The gross receipts of the company in 1984 were \$639,861.

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<sup>1/</sup> Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise specified.

### QUESTION

If a proposal to develop land within the service area of the Alisal Water Company comes before the Planning Commission, what standard would apply for purposes of determining whether the decision on the proposed development could have a material financial effect on the Alisal Water Company which would require Planning Commissioner Adcock's disqualification?

### CONCLUSION

If a proposal to develop land within the service area of the Alisal Water Company comes before the Planning Commission, and the decision could increase or decrease the company's gross revenues for a fiscal year by \$30,000 or more, the effect of the decision on the Alisal Water Company would be considered material. Under those circumstances, Planning Commissioner Adcock must disqualify himself from participating in that decision.

### DISCUSSION

Section 87100 prohibits a public official from making, participating in, or attempting to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest. A public official has a financial interest in a governmental decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on, among other things, any business entity in which the public official has a direct or indirect investment worth one thousand dollars (\$1,000) or more. Section 87103(a).<sup>2/</sup>

Commissioner Adcock has an investment interest worth \$1,000 or more in the Alisal Water Company. Therefore, he is required to disqualify himself from participating in any decision of the Planning Commission which could have a material financial effect on the Alisal Water Company.

The Commission has adopted regulation 2 Cal. Adm. Code Section 18702.2, which provides guidance as to whether the

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<sup>2/</sup> You did not provide any information about whether Planning Commissioner Adcock or his spouse is employed by the Alisal Water Company; however, that information would not change our determination concerning the applicable materiality standard. See 2 Cal. Adm. Code Section 18702(b) (3) (C).

Mr. David M. Kennedy  
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effect of a governmental decision on a business entity will be considered material. This regulation provides, in pertinent part:

(e) The effect of a decision on any business entity...which is qualified for public sale in this state pursuant to Corporations Code Section 25110 (which applies to partnerships and other business entities as well as corporations), will be material if:

(1) The decision will result in an increase or decrease in the gross revenues for a fiscal year of \$30,000 or more; or

(2) The decision will result in the business entity incurring or avoiding additional expenses or reducing or eliminating existing expenses for a fiscal year in the amount of \$7,500 or more; or

(3) The decision will result in an increase or decrease in the value of assets or liabilities of \$30,000 or more.

2 Cal. Adm. Code Section  
18702.2(e)

Whether this test applies to the Alisal Water Company depends upon whether the Alisal Water Company has qualified for public sale pursuant to Corporations Code Section 25110.

Corporations Code Section 25110 provides that it is unlawful for any person to offer or sell in this state any security in an issuer transaction unless the sale is qualified under certain sections of the Corporations Code, or is exempted by certain sections of the Corporations Code. According to the information you have provided concerning the Alisal Water Company, it appears that the sale of stock in that company is exempted from Corporations Code Section 25110 by Corporations Code Section 25100(e), which states:

The following securities are exempted from the provisions of Sections 25110, 25120, and 25130:...

(e) Any security...the issuance of which is subject to authorization by the...Public Utilities Commission....

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Therefore, we conclude that the Alisal Water Company is qualified for public sale pursuant to Corporations Code Section 25110. Accordingly, it is appropriate to apply the test contained in 2 Cal. Adm. Code Section 18702.2(e) to determine whether the effect of a decision on the Alisal Water Company would be considered material.

Consequently, Planning Commissioner Adcock is not required to disqualify himself from a decision on a proposed development which could affect the gross revenues of the Alisal Water Company unless the decision could increase or decrease the company's gross revenues by \$30,000 or more in a fiscal year.

If you have any further questions regarding this matter, please contact me at (916) 322-5901.

Sincerely,



Kathryn E. Donovan  
Counsel  
Legal Division

KED:nwm



**City of Salinas F P P C**

OFFICE OF THE CITY ATTORNEY • 200 Lincoln Avenue • Salinas, California 93901 • (408) 758-7256

SEP 9 9 46 AM '85

September 3, 1985

Barbara Milman  
General Counsel  
Fair Political Practice Commission  
P. O. Box 807  
Sacramento, CA 95804

Re: Request for Opinion

Dear Ms. Milman:

The subject of this request is a City of Salinas Planning Commissioner, Robert T. Adcock. The question will pertain to the Commissions new guidelines on materiality.

The facts are as follows. In 1934, a Mr. Adcock (an ancestor of Robert Adcock) formed the Adcock Water Company serving an area adjacent to the City of Salinas which has since been annexed to the City. That company was incorporated in 1954 as the Alisal Water Company. It has received from the P.U.C. a certificate of convenience and necessity. The P.U.C. has, as I understand it, authorized the sale of stock. The stock that has been issued has not been sold publicly. Mr. and Mrs. Robert T. Adcock own 8300 shares. There is an employee stock ownership trust which owns 3350 shares.

The gross receipts for the Alisal Water Company in 1984 were \$639,861. The monthly water charge per dwelling unit is approximately \$6 to \$7 per month.

The City has recently annexed 1200 acres of agricultural land, part of which is in the service area of the Alisal Water Company. That land is basically, the only land subject to development in the City. There are only a handful of owners of the land, generally developers. Development will begin just as soon as the City is able to form assessment districts or prepare development agreements to provide for major capital improvements. In other words, development appears imminent.

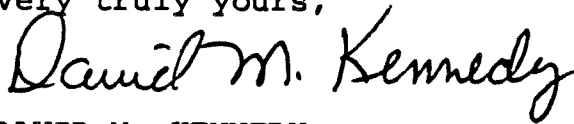
The City anticipates developments in excess of 120 units within this area. (120 units at \$7 per month exceeds gross revenue of \$10,000 per fiscal year).

September 3, 1985  
Barbara Milman  
Page 2

I am requesting an opinion, based upon the foregoing, as to whether subsection (e) or subsection (g) of Section 18702.2, CAC, (or some other regulation) should be used in determining the material financial effect on Mr. Adcocks Water Company.

Thank you for your consideration.

Very truly yours,

A handwritten signature in cursive script that reads "David M. Kennedy". The signature is written in dark ink and is positioned below the typed name.

DAVID M. KENNEDY  
City Attorney

DMK:jb



**City of Salinas**

OFFICE OF THE CITY ATTORNEY • 200 Lincoln Avenue • Salinas, California 93901 • (408) 758-7256

NOV 7 8 29 AM '86

November 4, 1986

Kathryn E. Donovan, Counsel  
Legal Division  
Fair Political Practices  
Commission  
428 J Street, Suite 800  
P.O. Box 807  
Sacramento, CA 95804-0807

Re: Planning Commissioner Robert Adcock  
Your File No. A-85-194

Dear Ms. Donovan:

This letter seeks to confirm the information I relayed to you by telephone on Friday, October 31, 1986. At that time I responded to the reference in your letter dated October 28, 1986 which reads "Mr. Adcock's failure to authorize your request for advice is an additional reason for our decision to withdraw our advice." Mr. Adcock did authorize this office's request for advice dated September 3, 1985. Mr. Adcock did not authorize this office's request for advice dated August 26, 1986. I am sorry for any confusion that has resulted from this.

Thank you for all of your assistance and cooperation in this matter.

Very truly yours,

DAVID M. KENNEDY  
City Attorney

DMK:jb

cc: Robert Adcock



## City of Salinas

OFFICE OF THE CITY ATTORNEY • 200 Lincoln Avenue • Salinas, California 93901 • (408) 858-1866

F P P C  
SEP 22 8 36 AM '86

September 18, 1986

Kathryn E. Donovan  
Counsel  
Legal Division  
Fair Political Practices Commission  
428 J Street, Suite 800  
P.O. Box 807  
Sacramento, CA 95804-0807

Re: Request for Advice #86-270

Dear Ms. Donovan:

Thank you for your phone inquiry of September 18, 1986 regarding the ownership of improvements such as water pumps, wells, and pipes. Please be advised that I was told by Mrs. Patricia Adcock, wife of Robert T. Adcock and co-owner of 8300 shares of Alisal Water Company stock, that the water company owns, maintains and repairs all improvements. This information was later confirmed by Mr. Adcock himself.

I hope this information is sufficiently responsive to your inquiry. Thank you again for your attention to this matter.

Very truly yours,

DAVID M. KENNEDY  
City Attorney

By Stephanie A. Atigh  
STEPHANIE A. ATIGH  
Assistant City Attorney

SAA:jb

cc: Robert T. Adcock





## City of Salinas

OFFICE OF THE CITY ATTORNEY • 200 Lincoln Avenue • Salinas, California 93901 • (408) 758-7256

E P P C  
AUG 29 8 54 AM '86

August 26, 1986

Fair Political Practices Commission  
P.O. Box 807  
Sacramento, CA 95804-0807

Re: Request for Opinion  
Your File No. A-85-194

Dear Commission:

In September, 1985, this office requested an opinion regarding Robert T. Adcock, and we received the Commission's response in a letter dated October 4, 1985 from Kathryn E. Donovan. This office now has additional questions regarding Mr. Adcock based on the facts set out in the September, 1985 letter as well as additional information.

Alisal Water Company, incorporated in 1954, serves an area within the City of Salinas. The P.U.C. has issued a certificate of convenience and necessity and has authorized the sale of stock that has not been sold publicly. Mr. and Mrs. Robert T. Adcock own 8300 shares. There is an employee stock ownership trust which owns 3350 shares.

Gross receipts for Alisal Water Company in 1984 were \$639,861. The monthly water charge per dwelling unit is approximately \$6-7 per month.

In 1984, the City annexed 1200 acres of agricultural land, part of which is in the service area of Alisal Water Company. Development of this area has already begun.

Availability of water has become a problem in the Alisal Water Co. service area in that water pressure has reportedly diminished in developed areas and there is insufficient water in the areas to be developed. Alisal Water Co. has been charging developers for the cost of improvements including pipes, pumps, etc. In addition, Alisal Water Co. has charged the costs of wells to some developers. In some cases, Alisal Water Co. requires a cash deposit of \$200 per unit, to be set aside as a deposit until the well is drilled, at which time the funds are disbursed to Alisal Water Co. which, in turn, arranges for a contractor to dig and install the well.

August 26, 1986  
Fair Political Practices Commission  
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This was the case in a recent apartment development of 81 units. The cost of improvements to that developer, including the well cost, has exceeded \$30,000.

The ownership of the improvements accrue to Alisal Water Company as assets in 40 years according to the Company's accounting system, such that the developer's capital is treated as loan proceeds. The actual asset is depreciated at a rate of 3% per year so that this accounting method allows for depreciation to zero prior to full acquisition of the asset.

Mr. Adcock is a member of the Salinas Planning Commission and I am requesting an opinion, based on this information as to whether the effect of a development decision on the Alisal Water Company is material pursuant to CAC Section 18702.2(e).

Specifically, is the \$200 per unit deposit or the actual payment of the expenses for wells and improvements an increase in the Company's gross revenues subject to the limit of \$30,000 per fiscal year? And in particular, is "gross revenue" interpreted as it reads so that regardless of the necessary contractor expense, the gross revenue of the company will have been increased by the receipt of funds?

Second, is the payment for well improvements by the developers an avoidance of additional expenses subject to the limit of \$7500 per fiscal year?

Finally, is the increase or decrease in assets of \$30,000 or more computed pursuant to any actual benefit gained by the Water Company or computed pursuant to the Company's accounting methods for accrual and depreciation?

Thank you for your consideration and assistance in this regard.

Very truly yours,

DAVID M. KENNEDY  
City Attorney

By Stephanie A. Atigh  
STEPHANIE A. ATIGH  
Assistant City Attorney

SAA:jb

cc: Robert T. Adcock



# California Fair Political Practices Commission

October 28, 1986

David Kennedy  
City Attorney  
200 Lincoln Avenue  
Salinas, CA 93901

Re: Planning Commissioner Robert  
Adcock; Our File No. A-85-194

Dear Mr. Kennedy:

On October 4, 1985, we issued an advice letter (No. A-85-194) concerning the duties of Planning Commissioner Robert Adcock under the conflict of interest provisions of the Political Reform Act.<sup>1/</sup> In that letter, we stated that the Act does not bar Mr. Adcock from participating in a decision to develop land within the service area of Mr. Adcock's water company unless the decision could increase or decrease the water company's gross revenues by \$30,000 in a fiscal year. It has recently come to our attention that we were not presented with all material facts regarding the effect of these decisions on Mr. Adcock's water company and that the request for advice was not authorized by Mr. Adcock.

Section 83114(b) provides that reliance on written advice from the Commission by a person who has requested that written advice is a complete defense in any enforcement proceeding initiated by the Commission and is evidence of good faith conduct in any other civil or criminal proceeding. However, the immunity provided by statute requires disclosure of all material facts. Since we were not presented with material facts regarding the foreseeable effects on the assets of Mr. Adcock's water company, we must inform you that our advice is hereby withdrawn.

Mr. Adcock's failure to authorize your request for advice is an additional reason for our decision to withdraw our advice. Regulation 18329(b) (copy enclosed) specifies who may request formal advice:

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<sup>1/</sup> Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise noted. Commission regulations appear at 2 California Administrative Code Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Administrative Code.

David Kennedy  
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Formal written advice may be requested in writing pursuant to Government Code Section 83114(b) by any person whose duties under the Act are in question or by that person's authorized representative.

Regulation 18329(b)(1).

The Commission may decline to issue formal written advice if a requestor is seeking advice about another person's duties and has not been authorized to do so by that person. Regulation 18329(b)(3)(B).

The withdrawn letter provides Mr. Adcock with no defense as to his actions as a Planning Commissioner in any enforcement proceeding initiated by the Fair Political Practices Commission. Furthermore, that letter will not be considered evidence of good faith conduct in any other civil or criminal proceeding which may be initiated as a result of Mr. Adcock's conduct. Section 83114(b); Regulation 18329.

We encourage Mr. Adcock to seek advice from us regarding future development decisions before the Planning Commission. We have provided your office with some general guidance concerning Mr. Adcock's situation in our letter to Stephanie Atigh, Assistant City Attorney (Our File No. I-86-270). Although we have withdrawn Advice Letter No. A-85-194, we have not changed our conclusion that the materiality guidelines set forth in Regulation 18702.2(e) are applicable to Mr. Adcock's water company.

It is very important that you follow the requirements of Regulation 18329(b) in any future requests for advice. These requirements are as follows:

(b) Formal Written Advice

(1) Formal written advice may be requested in writing pursuant to Government Code Section 83114(b) by any person whose duties under the Act are in question or by that person's authorized representative.

(2) Requests for formal written advice will not be acted upon unless the following requirements are met:

David Kennedy  
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(A) The name, title or position, and mailing address of the person whose duties are in question are provided. In addition, if the request is submitted by an authorized representative, it shall contain a specific statement that such authorization has been made.

(B) All the facts material to the consideration of the question or questions presented have been provided in a clear and concise manner.

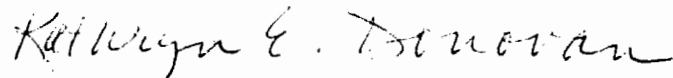
Regulation 18329(b)(1) and (2).

Once these requirements are met, we will make every reasonable effort to provide formal written advice without unnecessary delay and in sufficient time to facilitate compliance with the Act.

If you or Mr. Adcock have any questions regarding this letter, please contact me at (916) 322-5901.

Sincerely,

Diane M. Griffiths  
General Counsel



By: Kathryn E. Donovan  
Counsel, Legal Division

DMG:KED:km  
cc: Robert T. Adcock